



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
**DALLAS REGION**

**A. Maceo Smith Federal Building**  
525 S. Griffin Street, Suite 926, LB 107  
Dallas, Texas 75202-5093  
(214)767-6266 FAX: (214)767-0156  
[www.flra.gov](http://www.flra.gov)

May 12, 2015

Eugene Smith  
200 South McClendon Street  
Forrest City, Arkansas 72335

Re: Freedom of Information Act Request  
2015-000049

Dear Mr. Smith:

This is in reply to your letter, in which you requested certain information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which was received in this office on April 9, 2015. In your letter, you requested "all documents, memos, discussions, decisions both written and recorded oral communications pertaining to and related to the ULP complaint filed in the name of Eugene Smith against the U.S. Army Office of Surgeon General/U.S. Department of Defense filed with the Federal Labor Relations Authority Regional Office in Dallas, Texas, and the Headquarters in Washington, DC." I am responding with respect to your request for documents of the Dallas Regional office.

We have done a thorough search of our records and have determined that there is one unfair labor practice charge filed by you with the Dallas Regional office on May 19, 2009, Case No. DA-CA-09-0230. Due to the age of the documents requested, the case file had already been submitted to the National Archives and Records Administration, Federal Records Center, in Fort Worth, Texas. A request was made to return the case file to this office and the case file was returned and received by this office on May 8, 2015.

After careful consideration of your request, it is my determination that your request will be granted in part and denied in part. I have enclosed copies of the public documents in the above-referenced cases, an index of which is attached. It is my determination that the additional information in the case file is exempt from disclosure under the Freedom of Information Act.

The chronology log; intra-office memoranda; and final investigative report; found in the above-referenced case file is denied as this information is protected from disclosure by the attorney work-product privilege found under Exemption 5. 5 U.S.C. § 552(b)(5). The attorney-work product privilege attaches once there is "some articulable claim likely to lead to litigation," e.g., the filing of a ULP charge. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980). The attorney-work product privilege protects documents and other

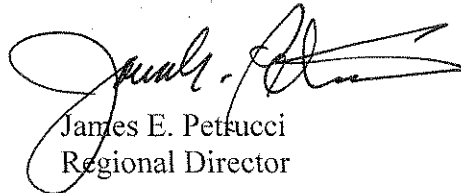
memoranda prepared by an attorney in anticipation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947).

The inter-office routing and assignment forms, communications between the Authority agent and the Charged Parties; and quality checklist form found in the above-referenced case file is denied as this information is protected from disclosure by the deliberative process privilege found under Exemption 5. 5 U.S.C. § 552(b)(5). The deliberative process privilege applies to documents that are (1) predecisional, i.e., before the adoption of agency policy, *Mapother v. Department of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993) and (2) deliberative, i.e., part of a process of making recommendations on legal or policy matters. *Jordan v. Department of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978). This exemption serves the primary policy interest of encouraging frank and open discussions between subordinates and superiors on matters of policy, as well as to protect against a premature disclosure of proposed policy before it is finally adopted. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). This exemption has been held to protect routine inter- and intra-agency consultations by and among agency personnel in the course of an investigation. *E.g., Perdue Farms*, 1997 U.S. Dist. LEXIS 14579 at \*\*30-36 (NLRB investigation).

With respect to that part of your FOIA request that I have granted, there are no charges associated with granting the request. 5 C.F.R. §2411.10.

I am responsible for the above determination. In accordance with Section 2411.7 of the FLRA Regulations, 5 C.F.R. §2411.10, you may obtain review of this determination by filing a written appeal with the General Counsel of the FLRA within 30 days after you receive notification of the denial of your FOIA request. Any such appeal should be filed with the General Counsel of the FLRA, 1400 K Street NW, Second Floor, Washington, D.C. 20424-0001.

Very truly yours,



James E. Petrucci  
Regional Director

cc: Office of the General Counsel, Federal Labor Relations Authority, 1400 K Street NW,  
Second Floor, Washington DC 20424-0001